

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF MASSACHUSETTS

RICHARD W. COMERFORD  
PLAINTIFF

Civil Action No. 05-CV-11365-RGS

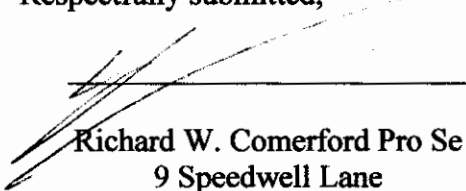
V.

Hon. William G. Young  
DEFENDANT

**Plaintiff's Motion For Leave To Proceed In Forma Pauperis**

1. Pursuant to the order of the U.S. Court of Appeals dated 13 February 2006 I hereby file my second compliant motion, along with Form 4 (financial affidavit) before this honorable Court.
2. I hereby move this honorable Court or leave to proceed in forma pauperis in the above captioned case.
3. In support of his motion plaintiff attaches hereto his affidavit.

Respectfully submitted,

  
Richard W. Comerford Pro Se  
9 Speedwell Lane  
Plymouth, Massachusetts 02360  
(508) 833-9396

Dated 16 February 2006

**Certificate of Service**

I hereby certify as attested by my signature above that served a true copy of the above document by First Class Mail upon the United States Attorney for the District of Massachusetts on 16 February 2006.

Denied. See Court's Order of 7-25-05. R.M. D'Amico DJ 2-27-06.

**Affidavit to Accompany  
Motion for Leave to Appeal in Forma Pauperis**

District Court No. 05-CV-11365-RGS  
Appeal No. 05-2467

v.

**Affidavit in Support of Motion**

I swear or affirm under penalty of perjury that, because of my poverty, I cannot prepay the docket fees of my appeal or post a bond for them. I believe I am entitled to redress. I swear or affirm under penalty of perjury under United States laws that my answers on this form are true and correct. (28 U.S.C. § 1746; 18 U.S.C. § 1621.)

Signed: [Signature]

**Instructions**

Complete all questions in this application and then sign it. Do not leave any blanks; if the answer to a question is "0," "none," or "not applicable (N/A)," write in that response. If you need more space to answer a question or to explain your answer, attach a separate sheet of paper identified with your name, your case's docket number, and the question number.

Date: 4 Feb 06

My issues on appeal are:

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	\$ <u>0</u>	\$ _____	\$ _____	\$ <u>0</u>
Self-employment	\$ <u>0</u>	\$ _____	\$ _____	\$ _____
Income from real property (such as rental income)	\$ <u>0</u>	\$ _____	\$ _____	\$ _____
Interest and dividends	\$ <u>0</u>	\$ _____	\$ _____	\$ _____

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Gifts	\$ <u>0</u>	\$ _____	\$ _____	\$ _____
Alimony	\$ <u>0</u>	\$ _____	\$ _____	\$ _____
Child support	\$ <u>0</u>	\$ _____	\$ _____	\$ _____
Retirement (such as social security, pensions, annuities, insurance)	\$ <u>0</u>	\$ _____	\$ _____	\$ _____
Disability (such as social security, insurance payments)	\$ <u>0</u>	\$ _____	\$ _____	\$ _____
Unemployment payments	\$ <u>0</u>	\$ _____	\$ _____	\$ _____
Public-assistance (such as welfare)	\$ _____	\$ _____	\$ _____	\$ _____
Other (specify): _____	\$ <u>0</u>	\$ _____	\$ _____	\$ <u>0</u>
Total Monthly income:	\$ <u>0</u>	\$ _____	\$ _____	\$ <u>4.50</u>

2. List your employment history, most recent employer first. (Gross monthly pay is before taxes or other deductions)

Employer	Address	Dates of Employment	Gross monthly pay
<u>Army</u>	<u>Fort Belvoir</u>	<u>1951</u>	<u>No Pay</u>
	<u>Colorado</u>	<u>to</u>	<u>June 1951</u>
		<u>present</u>	

3. List your spouses's employment history, most recent employer first. (Gross monthly pay is before taxes or other deductions)

Employer	Address	Dates of Employment	Gross monthly pay
<u>Capital</u>	<u>Pharmacia</u>	<u>@ 1944</u>	<u>@ \$4,600</u>
		<u>to present</u>	

4. How much cash do you and your spouse have? \$ 6410.00

Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Financial Institution	Type of Account	Amount you have	Amount your spouse has
<u>Bank of America</u>	<u>Checking</u>	\$ <u>500.00</u>	\$ <u>500.00</u>
<u>Bank of America</u>	<u>Investment</u>	\$ <u>100.00</u>	\$ <u>100.00</u>
		\$ <u>0.00</u>	\$ <u>0.00</u>

If you are a prisoner, you must attach a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months in your institutional accounts. If you have multiple accounts, perhaps because you have been in multiple institutions, attach one certified statement of each account.

5. List the assets, and their values, which you or your spouse owns. Do not list clothing and ordinary household furnishings.

Home (Value)	Other real estate (Value)	Motor Vehicle #1 (Value)
<u>Home used for 170,000 @ 1993</u>	<u>None</u>	Make & year: <u>Ford 2001</u>
		Model: <u>Taurus</u>
		Registration#: <u></u>
Motor Vehicle #2 (Value)	Other assets (Value)	Other assets (Value)
Make & year: <u>None</u>	<u>None</u>	<u>None</u>
Model: <u></u>	<u></u>	<u></u>
Registration#: <u></u>	<u></u>	<u></u>

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
<u>None</u>	<u></u>	<u></u>
<u></u>	<u></u>	<u></u>
<u></u>	<u></u>	<u></u>

7. State the persons who rely on you or your spouse for support:

Name	Relationship	Age
<u>None</u>	<u></u>	<u></u>
<u></u>	<u></u>	<u></u>
<u></u>	<u></u>	<u></u>

8 Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate.

	You	Spouse
Rent or home mortgage payment (include lot rented for mobile home)	\$ <u>0</u>	\$ <u>0</u>
Are any real estate taxes included? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Is property insurance included? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Utilities (electricity, heating fuel, water, sewer, and Telephone)	\$ <u>0</u>	\$ <u>21.50</u>
Home maintenance (repairs and upkeep)	\$ <u>0</u>	\$ <u>0</u>
Food	\$ <u>0</u>	\$ <u>0</u>
Clothing	\$ <u>0</u>	\$ <u>0</u>
Laundry and dry-cleaning	\$ <u>0</u>	\$ <u>0</u>
Medical and dental expenses	\$ <u>0</u>	\$ <u>0</u>
Transportation (not including motor vehicle payments)	\$ <u>0</u>	\$ <u>0</u>
Recreation, entertainment, newspapers, magazines, etc.	\$ <u>0</u>	\$ <u>0</u>
Insurance (not deducted from wages or included in Mortgage payments)	\$ <u>0</u>	\$ <u>0</u>
Homeowner's or renter's	\$ <u>0</u>	\$ <u>6.75</u>
Life	\$ <u>0</u>	\$ <u>0</u>
Health	\$ <u>0</u>	\$ <u>0</u>
Motor Vehicle	\$ <u>0</u>	\$ <u>10</u>
Other: <u>Dental</u>	\$ <u>0</u>	\$ <u>3.4</u>
Taxes (not deducted from wages or included in Mortgage payments)(specify): <u>Real Estate</u>	\$ <u>0</u>	\$ <u>0</u>
<u>12 x 126</u>		
Installment payments	\$ <u>0</u>	\$ <u>0</u>
Motor Vehicle	\$ <u>0</u>	\$ <u>0</u>
Credit card (name): _____	\$ <u>0</u>	\$ <u>0</u>
Department store (name): _____	\$ <u>0</u>	\$ <u>0</u>
Other: _____	\$ <u>0</u>	\$ <u>0</u>

Alimony, maintenance, and support paid to others

\$ \_\_\_\_\_

\$ \_\_\_\_\_

Regular expenses for operations of business, profession, or farm (attach detailed statement)

\$ \_\_\_\_\_

\$ \_\_\_\_\_

Other (specify): \_\_\_\_\_

\$ \_\_\_\_\_

\$ \_\_\_\_\_

**Total monthly expenses:**

\$ \_\_\_\_\_

\$ \_\_\_\_\_

9. Do you expect any major changes to your monthly income or expenses in your assets or liabilities during the next 12 months?

☐ Yes ☒ No

If yes, describe on an attached sheet

10. Have you paid — or will you be paying — an attorney any money for services in connection with this case, including the completion of this form? ☐ Yes ☒ No

If yes, how much? \$ \_\_\_\_\_

If yes, state the attorney's name, address, and telephone number:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

11. Have you paid — or will you be paying — anyone other than an attorney (such as a paralegal) any money for services in connection with this case, including the completion of this form? ☐ Yes ☒ No

If yes, how much? \$ \_\_\_\_\_

If yes, state the person's name, address, and telephone number:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

12. Provide any other information that will help explain why you cannot pay the above fees for your appeal

See Attached Affidavit

## **Affidavit**

### **Military Background**

I, Richard W. Comerford state under the penalty of perjury as attested by my signature below that the following information is true to the best of my knowledge and memory as of the date of said signature.

1. I qualified for retirement from active duty pursuant to 10 USC 3911 on or about **October 1992**.
2. I was incapacitated in the line of duty in the course of rescuing a comrade while serving on Active Guard and Reserve ("AGR") duty pursuant to 32 USC 502 (f) on or about **August 1993**. (Note: The government in violation of 10 USC 101/115 and Army Regulation 135-18 had failed to report to Congress that I and other soldiers was serving on AGR duty and it had also failed to count I and other soldiers into the authorized active duty end strength and it had paid I and other soldiers with funds that had been appropriated by Congress for other purposes. The government in violation of the above cited statutes and regulations had also failed to credit me for my service on AGR duty and to retirement from active duty.)
5. The government improperly failed to provide me with entitled active duty medical care in violation of Army Regulations 40-3, 50-501 and 135-381. It improperly stopped my entitled active duty medical care on or about **October 1993**.
6. The government also improperly stopped my active duty pay without due process or discharge from AGR duty in violation of 10 USC 1168 on or about **July 1994**.
7. The government further improperly conducted and filed a falsified line of duty investigation in violation of AR 600-8-1 on or about **January 1995**.
8. I initiated a compliant against the Massachusetts National Guard with the U.S. Army Inspector General ("IG") pursuant to Army Regulations 20-1 on or about 21 December 1994.
9. The IG found:
  - a. I had been injured in the line of duty while serving on active duty in August 1993.
  - b. My chain of command did not provide proper or adequate medical care as requested by medical personnel in violation of AR 40-3.
  - c. The line of duty investigation regarding my injury contained errors, to include falsely stating that I had received proper medical care and that I had been medically returned to duty; and it was not submitted in a timely fashion in violation of AR 600-8-1.



- d. I was not medically returned to duty after I had been injured in the line of duty.
- e. I was improperly denied incapacitation pay in violation of AR 135-381.
- f. I was improperly released from active duty.

The IG recommended:

- a. That I be returned to active duty.
- b. That I receive proper medical care.
- c. That I receive incapacitation pay.

(Note: However the government did not follow the IG's recommendations. The government in violation of AR 20-1 improperly withheld the IG report from I and my Member of Congress until I prevailed in a civil action. *See 97-11962-WGY*. Instead the government in violation of 10 USC 1034 took reprisal against me for unlawfully communicating with the IG in violation.)

10. On or around **January 1995** about two weeks after I had initiated the above cited complaint with the IG the government attempted to frame me for purportedly collecting civilian employment benefits from a non-existent private security company named Phoenix Security USA Inc for the period from July 1994 to December 1994.

11. On or about **September 1997** as part of a settlement agreement to C.A. No. 97-11962-WGY the government finally released the above cited IG Report to me. The government then wrote to me and stated that corrective action would be taken in my case.

12. However corrective action was not taken by the government in my case. On or about **October 1998** I made a second complaint to the IG and my Member of Congress against the Massachusetts National Guard and MG Raymond A. Vezina

13. On or about **November 1998** the Massachusetts National Guard and MG Raymond A. Vezina for a second time falsely accused me purportedly collecting civilian employment benefits from a non-existent private security company named Phoenix Security USA Inc for the period from July 1994 to December 1994.

14. On or about **December 1998** the U.S. Attorney for Massachusetts declined to prosecute me for my purported crimes citing lack of evidence.

15. On or about **January 1998** I filed C.A. No. 99-0416F in Massachusetts Superior Court naming the Massachusetts National Guard and MG Vezina as defendants.

16. On or about **February 1998** the government reversed itself and purportedly established probable cause that I purportedly collected civilian employment benefits from a non-existent private security company now named Phoenix USA Inc. (Note: In 2003 the government wrote to my Member of Congress on this matter and again reversed itself and stated that it had "favorably amended" the purported establishment of probable cause.)



17. In **1999** the ABCMR in violation of an arbitration agreement in the above cited action refused to accept an application for the correction of my record and failed to open a case on me in violation of AR 15-185. (Note: I had received a copy of the ABCMR record of my case pursuant to a FOIA request.)

18. On or around **19 June 2002** the government informed me that I was eligible for retirement pay at age 60 (Twenty Year Letter).

19. On or around **12 April 2005** the government (U.S. Army Reserve) contacted me by telephone. It informed me that I had not been discharged from AGR duty. It also informed me that I remained on AGR duty until I was discharged from said duty by issue of a DD Form 214.

20. On or around **12 April 2005** the government (National Guard Bureau) contacted me by telephone. It informed me that I had not been discharged from AGR duty. It also informed me that I remained on AGR duty until I was discharged from said duty by issue of a DD Form 214.

21. On or around **10 July 2005** the government (ABCMR) contacted me by letter.

- a. It informed me that I had purportedly been discharged from AGR duty in April 1994.
- b. It also informed me that purportedly a copy of the DD Form 214 separating me from AGR duty had been sent to me by mail.
- c. It also informed me that purportedly I had been transferred to the Massachusetts National Guard after I had been purportedly been discharged from AGR duty in April 1994.
- d. It also informed me that purportedly I had served in the Massachusetts National Guard after I had been purportedly been discharged from AGR duty in April 1994 to December 1998 when I was purportedly discharged from the Massachusetts National Guard.
- e. *However there is no record of I being discharged from AGR duty in 1994 or at any other time. There is also no record of I being transferred to the Massachusetts National Guard after I had been purportedly been discharged from AGR duty in April 1994. There is also no record of I serving in the Massachusetts National Guard from April 1994 to December 1998 or being paid for said service pursuant to 32 USC 502.*

22. Neither I nor the U.S. and State Departments of Veterans Affairs have, pursuant to 10 UCS 1168 and 32 CFR 45, received a copy of the purported DD Form 214 which purportedly separated me from AGR duty in 1994. I have made multiple, lawful requests

pursuant to 5 USC 552 and 10 USC 1168 a copy of the purported DD Form 214. Said requests have gone unanswered.

23. As of **August 2005** the government last paid me for the month of April 1996. It has refused to either discharge or pay since said date. At the same time either the federal government or the State government have harassed me with baseless investigations in which they purport that I am collecting civilian employment pay. Without a discharge certificate separating me from AGR duty I cannot collect retirement, VA or civilian employment benefits. The government has placed me into a legal limbo and has made me a non-person in my own country. I am now a pauper.

  
Richard W. Comerford

Dated: 16 Feb 06